

HutchinsonBlackandCookLLC

Attorneys at Law

USDC SDNY
DOCUMENT
ELECTRONICALLY FILED
DOC #:
DATE FILED: 12/17/2024

John Clune

clune@hbcboulder.com

Daniel D. Williams

dan.williams@hbcboulder.com

Debbie Greenberger

dgreenberger@ecbawm.com

December 13, 2024

Honorable Mary Kay Vyskocil
 United States District Court
 Southern District of New York
 500 Pearl Street, Room 2230
 New York, New York 10007

RE: Carré Sutton v Gerald Marie, et ano., Case No: 1:21-cv-06787-MKV
Plaintiff Requests for Enlargement of Time to Serve Defendant Marie and Stay of Proceedings

Dear Judge Vykocil,

This letter on behalf of Plaintiff Carré Sutton seeks (1) additional time to complete service on Defendant Gerald Marie aka Gerald Marie Castellac beyond the December 26, 2024 deadline set by the Court (Dkt.39) and (2) a stay of all proceedings pending service on Marie. Defendant Trudi Tapscott concurs with the request for a stay.

Defendant Marie is a citizen of the nation of Spain and resides on its island of Ibiza. Pursuant to Fed. R. Civ. P. 4(f)(1), lawful service on Defendant Marie in Spain must follow the procedures outlined by the Hague Service Convention (“the Convention”) as both the United States and Spain are members of that convention. Accordingly, pursuant to Article 5(1)(a) of the Convention, service is required “by a method prescribed by [the State’s] internal law for the service of documents in domestic actions upon persons who are within its territory.”

Plaintiff has retained the US based Civil Action Group to assist in the service of the amended complaint on Defendant Marie. That group has advised of the following steps in the process:

“Once you retain APS/CAG to assist you with your international service, we will translate the documents (if applicable) and then assemble and submit a service request package to the Central Authority of the country you’re requesting service in. The Central Authority will review the request and, if they deem everything to be in order, will forward the request to the appropriate judicial authority for service to be completed in compliance with the laws of that country. Oftentimes, the request will travel through multiple judicial offices before it reaches the local court where service takes place. After service is completed, a Hague Service Convention compliant certificate (proof of service) will be executed and returned through the same judicial channels to the Central



921 Walnut St., Suite 200 | Boulder, CO 80302 | Tel (303) 442-6514 | Fax (303) 442-6593
www.hbcboulder.com

Honorable Mary Kay Vyskocil
 December 13, 2024
 Page 2

Authority and finally to our office. As such, it can take several weeks, and sometimes months, after service is effectuated for the Certificate to reach our office.”

Plaintiff's prior effort to serve Defendant Marie with the original complaint, also aided by Civil Action Group, took an exceedingly long ten months from application to the point of service.¹ However, Civil Action Group informed that COVID-19 had significantly delayed procedures worldwide. Plaintiff is also hopeful that sending a second pleading to the same person from the same matter may also quicken the process.

As the Court is aware, the normal ninety-day deadline for service of an individual does not apply to service on an individual in a foreign country. Fed. R. Civ. P. 4(m). This does not mean that the Court cannot affix its own deadline to serve defendants. However, the rule's relief from the normal deadline seems likely in contemplation of the lengthy nature of international service of process with procedures and timelines that cannot be expedited by a US Plaintiff. Considering this, Ms. Sutton would ask the Court to grant an extension of time of an additional six months to serve Defendant Marie. We will inform the Court promptly when he is served.

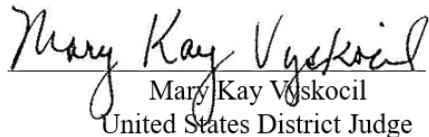
Additionally, given the significance of Defendant Marie's role in this matter and its litigation, Ms. Sutton would ask the Court to stay proceedings for that same time period in the interest of judicial economy. Plaintiff has conferred with counsel for Defendant Tapscott who agrees with the request for a stay.

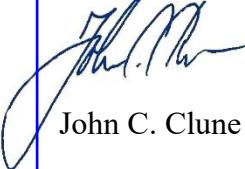
Thank you for your consideration of these issues and please advise if we can provide any further information for your consideration.

Sincerely,

Plaintiff's requests to extend the deadline to serve Defendant Marie for six months and stay all proceedings pending service on Defendant Marie are HEREBY DENIED. Plaintiff shall file proof of service on Defendant Marie by March 26, 2025. Any request for an extension shall be filed at least 72 hours prior to the deadline.
 SO ORDERED.

Date: 12/17/2024
 New York, New York


Mary Kay Vyskocil
 Mary Kay Vyskocil
 United States District Judge


 John C. Clune


 Daniel D. Williams

s/ Debra L. Greenberger
 Debra L. Greenberger

¹ Though a process server met with Defendant Marie to serve him in Ibiza, they were unable to complete proper service.